

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,)
)
Plaintiff,)
)
vs.) Case No.
) 3:21-CV-03496-VC
INTUITIVE SURGICAL, INC.,)
)
Defendant.)
-----)

VIRTUAL VIDEOCONFERENCE VIDEO-RECORDED
DEPOSITION OF GREG POSDAL, 30(B)(1)

Tuesday, November 1, 2022
Remotely Testifying from Phoenix, Arizona

Stenographically Reported By:
Hanna Kim, CLR, CSR No. 13083
Job No. 5541334-B

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SURGICAL INSTRUMENT SERVICE)
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INTUITIVE SURGICAL, INC.,)
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Virtual videoconference video-recorded
deposition of GREG POSDAL, in the capacity of a
30(B)(1) witness, Remotely Testifying from Phoenix,
Arizona, on Tuesday, November 1, 2022, beginning at
11:14 a.m., PDT, and concluding at 2:36 p.m.,
pursuant to the stipulations of counsel thereof,
before Hanna Kim, CLR, Certified Shorthand Reporter,
No. 13083.

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2
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Also Present:

RAMON PERAZA, Videographer

1 A. I'm currently the president and CEO.

2 Q. What are your responsibilities at -- as
3 president and CEO of SIS?

4 A. Corporate oversight mostly and managing
5 the COO and severals [verbatim] under -- underneath 11:16:41
6 me.

7 Q. Apart from the COO, who at SIS reports to
8 you?

9 A. No one directly. Actually, after we
10 installed the COO, they report to him and the COO 11:16:54
11 reports directly to me.

12 Q. Okay. Who is the COO?

13 A. Brad Turnmire.

14 Q. How long has Mr. Turnmire been with SIS?

15 A. About a year. 11:17:08

16 Q. Prior to Mr. Turnmire joining, who
17 reported to you at -- at SIS?

18 A. Most of the department managers.

19 Q. And who are those individuals?

20 A. Denise Posdal, Josh Foy, Keith Posdal, and 11:17:19
21 John Jarrette.

22 Q. What is Denise Posdal's role?

23 A. She's the operations manager, office
24 manager.

25 Q. What is Josh Foy's role? 11:17:53

1 A. Head of the flexible repair lab, flexible
2 endoscope repair lab.

3 Q. What is Keith Posdal's role?

4 A. Head of the used equipment and
5 instrumentation. 11:18:08

6 Q. What is John Jarrette's?

7 A. Head of instrumentation.

8 Q. Who does Keith Johnson report to?

9 A. Me -- I'm sorry. I missed that.

10 Q. Does he currently report to you, or does 11:18:23
11 he report to the COO?

12 A. He currently reports to me.

13 Q. So the COO and Mr. Johnson report to you,
14 and then the other folks who were previously in your
15 reporting chain report to the COO now? 11:18:35

16 A. That's correct.

17 Q. Okay. And Mr. Johnson is the SVP of
18 sales; is that correct?

19 A. Yes.

20 Q. Are Denise and Keith Posdal relations of 11:18:43
21 yours?

22 A. Siblings.

23 Q. How long have you been employed by SIS?

24 A. Since 1983. So 42 years, something like
25 that. Is that -- is that right? 11:19:04

1 No -- yeah. Is it -- no, 41 years.

2 40 years. I don't know.

3 Q. I think it's around 40.

4 What was your role when you first joined

5 SIS? 11:19:22

6 A. I was in a -- a repair role and kind of a
7 research and development role. We added services.

8 I added services to what we were currently

9 repairing.

10 Q. When did you become president and CEO? 11:19:34

11 A. 2000, I think.

12 Q. Who was the president and CEO prior to
13 you?

14 A. Robert Posdal, my father.

15 Q. Describe for me SIS's business at -- at 11:19:47
16 the present.

17 A. At the present, the great majority of our
18 business is -- is repair business, among a number of
19 different disciplines.

20 Q. What disciplines does SIS provide repair 11:20:06
21 services in?

22 A. Stainless steel instrumentation, specialty
23 instrumentation, frigid endoscopes, flexible
24 endoscopes, orthopaedic power instrumentation, video
25 instruments, and miscellaneous instruments. I think 11:20:25

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1 I got them all.

2 Q. Where, if anywhere, in -- in that list
3 does robotics fall?

4 A. That's -- that's a separate department.

5 And one that's not currently performed in-house. 11:20:52

6 Q. Okay. Are there other departments that
7 SIS facilitates services for but are not performed
8 in-house?

9 A. Previously mentioned harmonic scalpels,
10 PHACO handpieces, fiberoptic light cables, and some 11:21:14
11 overflow when we're beyond capacity.

12 Q. When -- when you say "overflow when you're
13 beyond capacity," you're referring to the -- the
14 other categories that you mentioned previously?

15 A. That's correct. 11:21:40

16 Q. So for the -- the list of disciplines that
17 you mentioned previously, in the ordinary course,
18 those -- those repair services are provided by SIS
19 employees; is that right?

20 A. That's correct. 11:21:59

21 Q. When SIS uses subcontractors, does it
22 disclose to its customers that it has subcontracted?

23 A. Not generally.

24 Q. Why not?

25 A. They don't -- they haven't asked. They 11:22:11

1 don't necessarily care.

2 Q. Who are SIS's main competitors?

3 A. STERIS and Agiliti.

4 Q. Are STERIS and Agiliti also independent

5 repair or service organizations? 11:22:32

6 A. They are.

7 Q. Does either STERIS or Agiliti have any

8 original equipment manufacturing division?

9 A. I'm not aware. The two corporations now
10 are enormous. They -- they had bought up most of 11:22:49

11 our direct competitors. The -- some of the bigger

12 ones that were direct competitors with us that are

13 now under those, STERIS and Agiliti flagships are

14 Northfield and IMS. Those are probably the two

15 bigger ones. Now they're rolled up under STERIS and 11:23:08

16 Agiliti, and they've got a whole host of product and

17 services that I'm -- I'm not completely familiar

18 with.

19 Q. Does SIS have any original equipment

20 manufacturing that it performs? 11:23:29

21 A. No.

22 Q. Has SIS ever performed any original

23 equipment manufacturing?

24 A. We've made some -- some trial pieces for

25 some people but no production. 11:23:43

1 instruments in 2012; right?

2 A. Or there about, yeah, I -- I wouldn't be
3 certain on the date.

4 Q. And you decided to not move forward with
5 that because of the chip; correct? 11:37:34

6 A. Correct.

7 MR. SNYDER: Objection.

8 BY MR. CHAPUT:

9 Q. After 2012, did SIS consider trying to get
10 into the EndoWrist instrument business again before 11:37:44
11 the 2019 relationship with Rebotix?

12 MR. SNYDER: Objection.

13 THE WITNESS: Likely not in any serious
14 way. Probably just more thoughts about this could
15 be lucrative. We should probably look into it, but 11:38:02
16 nothing beyond that.

17 BY MR. CHAPUT:

18 Q. How did SIS get into the relationship with
19 Rebotix to provide the reset process?

20 MR. McCAULLEY: Objection. Objection. 11:38:20
21 Form.

22 THE WITNESS: Okay.

23 As -- as stated earlier, we had a long
24 lasting relationship with Benjamin Biomedical, which
25 has the same -- same individuals involved with it as 11:38:38

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1 re- -- as Rebotix. And I had seen them at one of
2 the trade shows we were at, and they were displaying
3 that new technology.

4 BY MR. CHAPUT:

5 Q. When did that happen? 11:38:57

6 A. Spring, early summer of 2019, I believe.

7 Q. What conference was it, or what trade show
8 was it that you saw them?

9 A. I can't be certain, but it was probably
10 IAHCSMM, which is International Association of 11:39:18
11 Hospital Central Sterile and Materials Management.

12 Q. The technology that they were displaying
13 at the trade show, was that the interceptor chip
14 technology?

15 A. Yes. I'm -- I'm not sure they were 11:39:39
16 displaying the technology; only the ability to
17 perform that service.

18 Q. After the trade show, what happened next?

19 MR. McCAULLEY: Objection. Form.

20 THE WITNESS: We initiated conversations. 11:39:59
21 I had told Mr. Gibson that this was something that
22 was in the back of our minds, and that the -- the
23 only thing preventing us from moving forward with
24 that was -- was the issue of the chip counter. And
25 now that they had that resolved, we -- we felt 11:40:19

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1 strongly that that was something that we could
2 provide to our customers and -- and -- and be a
3 great addition to what we were doing.

4 BY MR. CHAPUT:

5 Q. And so, the -- the relationship with 11:40:42
6 Rebotix was that SIS would source customers for the
7 chip reset, and then Rebotix would perform the
8 actual service and send the -- the devices back to
9 SIS; is that basically how it worked?

10 MR. McCAULLEY: Objection. 11:41:00

11 THE WITNESS: Initially, yes. It was our
12 intent and -- and understanding on both parties that
13 we would like to bring that entire service in-house
14 as we do with almost every one of our other
15 services. But in the ramp-up time, especially with 11:41:19
16 how quickly this process moved, we would have had
17 instruments for that service prior to our being set
18 up for it. And that's -- that's how this program
19 got started.

20 BY MR. CHAPUT: 11:41:38

21 Q. Were there other companies that were
22 sourcing customers for Rebotix at the same time as
23 SIS?

24 A. I believe that Rebotix had reached out to
25 several more. I didn't know until later who one of 11:42:00

1 those was. They had an agreement with them for a
2 period of a year, and we had to wait for that
3 agreement to end to start working with Rebotix.

4 Q. What was the other company that had an
5 agreement with them? 11:42:25

6 A. I -- I -- I can't be a hundred percent
7 certain. But I believe that was Restore Robotics,
8 or -- or whatever's Clif's company was at that time.
9 Not sure if it -- it was named that or not.

10 Q. Was SIS's arrangement with Rebotix 11:42:42
11 exclusive, or was Rebotix allowed to have other
12 companies service customers for them?

13 A. Again, we were in the beginning phases of
14 that. But the discussions with Chris Gibson said
15 that their efforts had basically yielded no success 11:42:58
16 in their -- in -- in -- anyone else's ability to
17 sell this program.

18 We felt highly confident with our contacts
19 and our relationships and -- and our background that
20 we would be successful in this. And so, we were in 11:43:14
21 discussions with them about getting to the point
22 where it would be exclusive again.

23 They -- I think they had some doubt
24 whether we could do that or not based on their
25 previous experiences, but we were confident once we 11:43:33

1 could show them that -- that we could provide this
2 service accurately to customers, that we would be
3 able to move towards a more permanent and exclusive
4 relation -- relationship with them.

5 Q. Why was SIS confident that it would be 11:43:50
6 successful in the EndoWrist reset business?

7 A. A number of reasons. Being in the
8 business for as long as we had, we knew there was an
9 appetite for this service. From customers, I think
10 there largely was concern. I don't know if disdain 11:44:10
11 is too strong of a word about Intuitive and that the
12 customers didn't understand why these things were so
13 expensive, why they had limited lives, et cetera.

14 I think they -- they were clamoring for an
15 option. And -- and we had some significant 11:44:35
16 relationships with -- with IDNs and GPOs and knew
17 what the potential savings to the hospitals could
18 look like. And were -- were convinced that we'd be
19 able to do a great job of -- of bringing this to
20 market. 11:45:00

21 Q. What customers expressed to you that they
22 didn't understand why EndoWrist instruments had
23 limited lives?

24 A. Can you repeat that question.

25 Q. Sure. 11:45:15

1 Q. How long did you expect it to take for SIS
2 to achieve the greater than a hundred million
3 dollars in -- in annual revenue from the EndoWrist
4 reset business?

5 A. I -- I don't know for certain. 12:01:29

6 Q. Did you have any expectation as to how
7 that would -- how long that would take?

8 A. No. We -- we knew it wouldn't be
9 immediate. And in -- and in all likelihood, with
10 the declining units in the Sis, it would have had -- 12:01:46
11 largely had to do with how quickly can we get the Xi
12 up and running as well.

13 Q. Has SIS gotten the Xi up and running yet?

14 A. SIS has not attempted to get the S- -- the
15 Xi up and running yet. 12:02:06

16 Q. Has the Rebotix gotten the Xi up and
17 running yet?

18 A. To my knowledge, no.

19 Q. Has Restore gotten the Xi running up and
20 running yet? 12:02:20

21 A. In terms of its ability to read, yes. In
22 terms of replacing, I'm not certain. I think it's
23 safe to say, in -- in 2019 or 2020, had the Si
24 program been rolling along and we didn't have --
25 encountered the -- the ob- -- obstruction of our 12:02:35

1 ability to do this, I think that would have pursued
2 with far more vigor.

3 It -- it seemed crazy to invest a lot of
4 money if we didn't get past the -- Intuitive's
5 effect on the hospital and their -- their ability to 12:02:58
6 feel comfortable with -- with giving these items out
7 for chip re- -- reset without, you know, losing
8 their -- their service contracts with Intuitive.

9 Q. When did SIS start working with Restore?

10 A. Don't know the exact date, but it was 12:03:30
11 likely in the middle of 2020. It was after the
12 pandemic started rolling.

13 Q. Does SIS still have any ongoing business
14 with Rebotix, setting aside Benjamin Bi- --
15 Biomedical, but Rebotix specifically? 12:03:55

16 A. Rebotix specifically, no.

17 Q. Does SIS plan to enter into business again
18 with Rebotix specifically?

19 A. Sure. If we have multiple sources for
20 this service, we will use both of them. 12:04:07

21 Q. Does SIS still plan to perform the service
22 in-house for the Xi, once that is up and running?

23 A. I -- it -- it would be our -- our usual
24 business practice to do that.

25 Q. Under what circumstances would you not do 12:04:35

1 that?

2 A. Under the current conditions, if -- if
3 hospitals are unwilling to jeopardize their service
4 agreements with Intuitive, it would be futile to
5 pursue that.

12:04:49

6 Q. And if those current conditions were to
7 change, are there any circumstances under which SIS
8 would rely on service partners to perform the Xi
9 reset as opposed to doing it in-house?

10 A. I would suppose that is a question similar
11 to the one we faced early on. It -- if the -- if
12 the volume increased too rapidly, I believe we would
13 reach out to either/or of those to help supplement
14 the volume.

12:05:15

15 Q. Does SIS currently offer its customers the
16 Si EndoWrist reset service?

12:05:34

17 A. It's available. It hasn't been pursued or
18 spoken about recently.

19 Q. If a customer were to approach SIS,
20 would -- would the Si reset be performed by Restore
21 or Rebotix?

12:06:10

22 A. Likely, Rebotix, but I wouldn't dis- -- I
23 wouldn't count out the ability to use Restore,
24 Rebotix for that as well.

25 Q. For the EndoWrist reset services, how much

12:06:32

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1 did SIS pay to Rebotix for each service?

2 A. I believe it was in the neighborhood of
3 \$800 for the complete service, 8- or \$900 for the
4 complete service.

5 Q. Did SIS set its own prices that it charged 12:06:58
6 to customers for that service, or did it follow
7 Rebotix pricing?

8 A. We relied upon Rebotix pricing at the
9 time.

10 Q. If SIS had -- had moved forward and -- and 12:07:08
11 performed the service on its own, would it have
12 continued charging the same Rebotix prices, or would
13 SIS would have set its own prices?

14 A. I would think it's hard to say at this
15 time. I -- it would have to do with whether or not 12:07:25
16 we reached an agreement with Rebotix to -- to
17 consistently use their pricing and then the feedback
18 that we had gotten from our customers in terms of
19 the value of the service.

20 Q. What feedback did SIS get from its 12:07:36
21 customers about the value of the service?

22 A. That they were extremely happy with it.

23 Q. Did SIS and Rebotix ever have a written
24 agreement?

25 A. We were in the process of that. Again, 12:08:08

1 I -- this -- this all got shut down so quickly that
2 things just got put on the back burner. So there
3 was an agreement written. I don't believe there was
4 an agreement signed. But there is a -- a verbal
5 understanding that -- that we would continue. 12:08:25

6 I think we were told by Rebotix that in
7 the very short period of time that we had provided
8 this service that we were the only ones that made --
9 made any meaningful headway, and they were excited
10 to move forward with us. 12:08:42

11 Q. When did Rebotix tell you that?

12 A. It -- it had to be 2019/2020, probably the
13 second half of 2019.

14 Q. So you mentioned a couple times this --
15 the program getting shut down or -- or similar 12:09:04
16 words.

17 A. Mm-hmm.

18 Q. What do you mean by that?

19 A. I mean that the customers that we had
20 reached out to and some who had -- we had started to 12:09:15
21 work with already immediately received letters from
22 Intuitive.

23 Sometimes it was their local rep, to my
24 knowledge. Other times it was Intuitive's legal
25 counsel sending a scary, threatening letter, 12:09:35

1 throwing around, you know, scary terms, like this
2 may violate the FDA and their process, and -- and
3 that the -- the -- the final threat was -- and --
4 and those are my words; that -- that if they pursue
5 this service, that Intuitive can stop servicing 12:10:00
6 their equipment, will refuse to provide service
7 to -- for the robots and potentially provide them
8 with additional EndoWrists.

9 I don't know of this directly, but I know
10 of a story that there are two hospitals, I believe 12:10:24
11 in the southeast, that decided to push back on that
12 and pursue it. And one hospital was denied access
13 to new EndoWrists.

14 They said, Fine. We'll get them from our
15 sister hospital. And then the sister hospital was 12:10:42
16 threatened with not being able to purchase
17 additional EndoWrists there, either. And all of our
18 customers and the people we talked to were very
19 afraid of having their robotic program shut down.

20 Q. Did you speak to any customers directly 12:11:02
21 about the letters that they received from Intuitive?

22 A. I did not. I think I had some discussions
23 with Perry Kirwan at Banner about the existence of
24 these letters, and he was aware of them already.

25 So we probably had some discussions about 12:11:25

1 that. I can't remember off the top of my head if I
2 had any other specific conversations with any
3 customers directly.

4 Q. What did you and Mr. Kirwan discuss?

5 A. The fact that they very much wanted to 12:11:40
6 proceed with this program. They knew it was a huge
7 cost savings. They -- they were confident and
8 comfortable with the fact that it was safe and
9 effective.

10 I don't recall at the time, although, I'm 12:11:52
11 pretty confident we -- we did provide that service
12 with them on a handful of instruments to test, and
13 that they put them back in service without any
14 issues whatsoever, and were comfortable to move
15 forward with this. 12:12:13

16 That's probably the only direct
17 conversation I had with Perry Kirwan about it. I --
18 there's a lot of anecdotal information that came
19 through Keith Johnson in his discussions with Perry.

20 Q. How did Mr. Kirwan become confident and 12:12:30
21 comfortable that the reset process was safe and
22 effective?

23 A. As I mentioned, I believe we did some
24 samples for him, and he put them through a -- put
25 them back in service and had no issues with it. 12:12:42

1 them obviously did and that very shortly thereafter,
2 after getting either letters or -- or calls or
3 however they were contacted, with -- with some of
4 the language in those letters, it effectively ending
5 with -- and -- and we can refuse to service your 14:05:24
6 robot, put them in a spot where they could not
7 afford to take the risk and had to suck it up and
8 continue to buy new EndoWrists from Intuitive.

9 BY MR. SNYDER:

10 Q. In -- in -- in your answer, when you were 14:05:42
11 referring to -- to customers, were you referring to
12 hospitals and hospital systems?

13 A. Both.

14 Q. And do any particular hospitals or
15 hospital systems come to mind? 14:05:56

16 A. Oh, a number of them. Banner Health,
17 which I think is 33 hospitals -- now it -- it might
18 be more than that now, was very excited. I -- I --
19 they had a number of robots. They still had Sis.
20 They were very interested in this. I think Piedmont 14:06:18
21 Health was one of them. Kaiser Health.

22 Kaiser -- Kaiser had a system-wide
23 initiative, I think to -- that they voted on to
24 bring a significant contribution to their
25 facilities. And a -- a woman named Brenda Paulson 14:06:37

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1 brought this to the -- to this committee. And it
2 was awarded. They -- they were awarded for, in
3 different disciplines, part of this program. And I
4 think there was a -- a heading called Care
5 Transformation and -- and the initiative to bring 14:07:01
6 SIS EndoWrist repair to the facility and save them a
7 large amount of money, won that award as -- as an
8 initiative of the year before we even started it.
9 That's how important, that's how much of an impact
10 financially that this would have brought to all our 14:07:21
11 customers.

12 So Legacy, Kaiser, Banner, Advocate
13 Aurora, Piedmont, a number -- SSM, a number of other
14 customers. And most significantly, Vizient, who
15 wanted to bring this to all of their -- all of their 14:07:44
16 members.

17 And -- and we had a -- an agreement -- a
18 signed agreement with Vizient to be able to do this.
19 And, again, the savings totaled, you know,
20 potentially in the hundreds of millions. 14:07:55

21 Q. And I -- I believe you used the acronym at
22 one point, "GPO"? Is that --

23 A. Group purchasing --

24 Q. I'm sorry --

25 (Interruption in audio/video.) 14:08:10